

is considered to include State development and enforcement of standards on as many occupational safety and health issues as possible. To these ends, the Assistant Secretary intends to cooperate with the States so that they can obtain approval of plans for the development and enforcement of State standards which are or will be at least as effective as the Federal standards and enforcement.

(e) After the Assistant Secretary has approved a plan, he may approve one or more grants under section 23(g) of the Act to assist the State in administering and enforcing its program for occupational safety and health in accordance with appropriate instructions or procedures to be promulgated by the Assistant Secretary.

[36 FR 20751, Oct. 29, 1971, as amended at 61 FR 9230, Mar. 7, 1996]

#### § 1902.2 General policies.

(a) *Policy.* The Assistant Secretary will approve a State plan which provides for an occupational safety and health program with respect to covered issues that in his judgment meets or will meet the criteria set forth in § 1902.3. Included among these criteria is the requirement that the State plan provide for the development and enforcement of standards relating to issues covered by the plan which are or will be at least as effective in providing safe and healthful employment and places of employment as standards promulgated and enforced under section 6 of the Act on the same issues. In determining whether a State plan satisfies the requirement of effectiveness, the Assistant Secretary will measure the plan against the indices of effectiveness set forth in § 1902.4.

(b) *Developmental plan.* A State plan for an occupational safety and health program may be approved although, upon submission it does not fully meet the criteria set forth in § 1902.3, if it includes satisfactory assurances by the State that it will take the necessary steps to bring the State program into conformity with these criteria within the 3-year period immediately following the commencement of the plan's operation. In such case, the State plan shall include the specific actions it proposes to take and a time schedule

for their accomplishment not to exceed 3 years, at the end of which the State plan will meet the criteria in § 1902.3. A developmental plan shall include the date or dates within which intermediate and final action will be accomplished. If necessary program changes require legislative action by a State, a copy of a bill or a draft of legislation that will be or has been proposed for enactment shall be submitted, accompanied by (1) a statement of the Governor's support of the legislation and (2) a statement of legal opinion that the proposed legislation will meet the requirements of the Act and this part in a manner consistent with the State's constitution and laws. On the basis of the State's submission the Assistant Secretary will approve the plan if he finds that there is a reasonable expectation that the State plan will meet the criteria in § 1902.3 within the indicated 3-year period. In such case, the Assistant Secretary shall not make a determination under section 18(e) of the Act that a State is fully applying the criteria in § 1902.3 until the State has completed all the developmental steps specified in its plan which are designed to make it at least as effective as the Federal program, and the Assistant Secretary has had at least 1 year to evaluate the plan on the basis of actual operations. If at the end of 3 years from the date of commencement of the plan's development, the State is found by the Assistant Secretary, after affording the State notice and opportunity for a hearing, not to have substantially completed the developmental steps of the plan, the Assistant Secretary shall withdraw the approval of the plan.

(c) *Scope of State plan.* (1) A State plan may cover any occupational safety and health issue with respect to which a Federal standard has been promulgated under section 6 of the Act. An "issue" is considered to be an industrial, occupational or hazard grouping which is at least as comprehensive as a corresponding grouping contained in (i) one or more sections in subpart B or R of part 1910 of this chapter, or (ii) one or more of the remaining subparts of part 1910. However, for cause shown the Assistant Secretary may approve a

plan relating to other industrial, occupational or hazard groupings if he determines that the plan is administratively practicable and that such groupings would not conflict with the purposes of the Act.

(2) Each State plan shall describe the occupational safety and health issue or issues and the State standard or standards applicable to each such issue or issues over which it desires to assume enforcement responsibility in terms of the corresponding Federal industrial, occupational or hazard groupings and set forth the reasons, supported with appropriate data, for any variations the State proposes from the coverage of Federal standards.

(3) The State plan shall apply to all employers and employees within the affected industry, occupational or hazard grouping unless the Assistant Secretary finds that the State has shown good cause why any group or groups of employers or employees should be excluded. Any employers or employees so excluded shall be covered by applicable Federal standards and enforcement provisions in the Act.

### Subpart B—Criteria for State Plans

#### § 1902.3 Specific criteria.

(a) *General.* A State plan must meet the specific criteria set forth in this section.

(b) *Designation of State agency.* (1) The State plan shall designate a State agency or agencies as the agency or agencies responsible for administering the plan throughout the State.

(2) The plan shall also describe the authority and responsibilities vested in such agency or agencies. The plan shall contain assurances that any other responsibilities of the designated agency shall not detract significantly from the resources and priorities assigned to administration of the plan.

(3) A State agency or agencies must be designated with overall responsibility for administering the plan throughout the State. However, political subdivisions of the State may have the responsibility and authority for the development and enforcement of standards, provided that the State agency or agencies are given adequate authority by statute, regulation, or agreement,

to insure that the commitments of the State under the plan will be fulfilled.

(c) *Standards.* (1) The State plan shall include or provide for the development or adoption of, and contain assurances that the State will continue to develop or adopt, standards which are or will be at least as effective as those promulgated under section 6 of the Act. Indices of the effectiveness of standards and procedures for the development or adoption of standards against which the Assistant Secretary will measure the State plan in determining whether it is approvable are set forth in § 1902.4(b).

(2) The State plan shall not include standards for products distributed or used in interstate commerce which are different from Federal standards for such products unless such standards are required by compelling local conditions and do not unduly burden interstate commerce. This provision, reflecting section 18(c)(2) of the Act, is interpreted as not being applicable to customized products or parts not normally available on the open market, or to the optional parts or additions to products which are ordinarily available with such optional parts or additions.

(d) *Enforcement.* (1) The State plan shall provide a program for the enforcement of the State standards which is, or will be, at least as effective as that provided in the Act, and provide assurances that the State's enforcement program will continue to be at least as effective as the Federal program. Indices of the effectiveness of a State's enforcement plan against which the Assistant Secretary will measure the State plan in determining whether it is approvable are set forth in § 1902.4(c).

(2) The State plan shall require employers to comply with all applicable State occupational safety and health standards covered by the plan and all applicable rules issued thereunder, and employees to comply with all standards, rules, and orders applicable to their conduct.

(e) *Right of entry and inspection.* The State plan shall contain adequate assurance that inspectors will have a right to enter and inspect covered workplaces which is, or will be, at least as effective as that provided in section